

(1971) 03 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 958 of 1967

Isabel M. Rebello

APPELLANT

Vs

Kasarchand Anandram Banthia and Others

RESPONDENT

Date of Decision : 30-03-1971

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12, 12(2), 12(3)

Citation : AIR 1973 Bom 35 : (1972) 74 BOMLR 114 : (1972) ILR (Bom) 1223 : (1972) MhLj 349

Hon'ble Judges : Vaidhya, J

Bench : Single Bench

Advocate : P.K. Padhey and V.S. Shirokar, for the Appellant; V.V. Divekar, for the Respondent

Judgement

1. This petition under Article 227 of the Constitution of India raises an interesting point of interpretation of Section 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

2. The petitioner is the widow of one M. C. Rebello. Respondents Nos. 2 and 3 are the sons of M. C. Rebello. M. C. Rebello was a monthly tenant of a shop admeasuring 7" X 17" situated in municipal house No. 360, Panvel. The rent of the premises was Rs. 14/- per month. Respondent No.1 is the landlord of the premises. On September 3, 1964, respondent No.1 served M. C. Rebello with a notice terminating his tenancy on the ground that M. C. Rebello had failed and neglected to pay arrears of rent from November 1, 1963. Before the expiry of one month after the notice, on September 28, 1964, M. C. Rebello paid Rs.100/- to respondent No.1 and respondent No.1 accepted the same towards the arrears. Respondent No.1 filed on October 17, 1964 a suit in the Court of the Civil Judge, Junior Division, Panvel praying for possession of the above premises on the ground of non-payment of rent.

3. Unfortunately on that very day, M. C. Rebello died. The plaintiff brought on the

record his heirs the petitioner and respondents Nos. 2 and 3 as defendants Nos. 1, 2 and 3. The petitioner alone appeared and resisted the suit by filing a written statement in which she contended that the rent of Rs. 14/- was not the standard rent and it was excessive, that the Court should fix the standard rent at Rs. 10/- per month, that when Rs.100/- was paid by M. C. Rebello, she had paid the amount to respondent No.1 as respondent No.1 agreed that she should pay the balance of the amount within two months. She further contended that she sent Rs. 50/- by money order on October 19, 1964 and this money order was refused by respondent No.1. She contended further that it was respondent No.1 (who after having agreed to accept the balance two months after September 28, 1964 when Rs.100/- was paid), that was responsible for default and she was not a defaulter at the date of the suit.

4. The learned Civil Judge considered the oral and documentary evidence in the case carefully and found that though the compromise decree Ex. 31 between respondent No.1 and M. C. Rebello dated December 30, 1957 was lodged before Section 11-A came into force. Section 11-A protected the said decree and the petitioner could not allege or prove collusion or error of the facts as required by that section and hence, the decree was binding on the petitioner. The learned Civil Judge, therefore, held that the standard rent of the premises was Rs. 14/- per month as declared in the said consent decree.

5. The learned Judge, however, held that the plaintiff-respondent No.1 failed to prove that the defendants ***** in arrears of rent for more than six months, observing as follows:-

"By their application at Exh. 17, Exh. 22 and Exh. 32 the defendants have paid all the arrears and hence the suit for Rs. 61.88 will be without any cause and hence issue No.2 will have to be answered in the negative."

The learned Civil Judge further held that the defendants were tenants of the suit property by virtue of Section 5(11)(c) as defendant No.1 was residing with the late M. C. Rebello at the time of his death; and that she was protected u/s 12(1) because she was never in arrears of rent and she was observing and performing all the conditions of the tenancy. Hence the learned Civil Judge dismissed the plaintiff's suit with costs directing that the money deposited by defendant No.1 in Court should go to the plaintiff-respondent No.1.

6. Respondent No.1 carried an appeal against the said judgment and decree before the District Judge at Alibag. The learned Assistant Judge, Kolaba who heard the said appeal set aside the decree passed by the Civil Judge and decreed the plaintiff's suit for possession although he found as a fact that the petitioner had deposited all the arrears of rent in the Court below as he thought that notwithstanding the payment of Rs.100/- by M. C. Rebello on September 28, 1964 and the sending of the money order by the petitioner on October 19, 1964, he was compelled to follow the decision of this Court in *Manorama S. Masurekar v. Dhanalaxmi G. Shah*, (1966) 68 BomLR 412 and apply the provisions of

Section 12(3)(a) of the Rent Act.

7. The said decision of the learned Assistant Judge is challenged in the above petition on the ground that neither the aforesaid Manorama's case, (1966) 68 BomLR 412 decided by this Court and further confirmed by the Supreme Court in Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, nor the provisions of Section 12(3)(a) applied to the facts of the present case; and that the present case was governed either by Section 12(1) or by Section 12(3)(a) of the Bombay Rent Act. Mr. Divekar, the learned Counsel for respondent No.1, on the other hand contended that the present case was completely governed by the ratio in Manorama's case decided by the Supreme Court in Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, .

8. The contention on behalf of the petitioner must be accepted because the facts of Manorama's case are easily distinguishable from the facts of the present case. In Manorama's case the question which arose for decision was whether ***** than six months after a month's period after notice u/s 12(2) and before the institution of the suit for eviction attracted the operation of Section 12(3)(b) or Section 12(3)(a). That is not the question here. The question here is, what is the legal effect of payment of part of the arrears of rent within one month after the notice of termination u/s 12(2) so as to reduce the arrears of rent to less than six months. In my judgment, therefore, the learned Assistant Judge was in error in applying the principles laid down by this Court and subsequently approved by the Supreme Court in Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, to the facts of the present case.

9. Now, Section (a) must be considered in the context of the whole scheme of Section 12. Section 12(1) lays down that a landlord shall not be entitled to recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent, permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provisions of this Act. Section 12(2) further lays down that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served on the tenant in the manner provided u/s 106 of the Transfer of Property Act, 1882. Sub-section (3) (a) and (b) deal with the situation after the institution of the suit. Sub-section (3) (b) applies to every kind of ejectment suit on the ground of non-payment of rent to which sub-section 3 (a) does not apply. Sub-section (3) (a) compels a Court before whom the suit is filed to pass a decree if the conditions laid down in that sub-section are fulfilled by the facts and circumstances of the case. The conditions for the application of sub-section (3) (a) are

- (1) that the rent of the suit premises must be payable by the month;
- (2) that there should be no dispute regarding the amount of standard rent or

permitted increases;

(3) such rent or increases must have been in arrears for a period of six months or more; and

(4) that the tenant neglected to make "payment thereof" until the expiration of the period of one month after notice referred to in sub-section (2).

In Manorama's case (1966) 68 Bom LR 412 this Court and the Supreme Court Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, held that sub-section 3 (a) was attracted because all these four conditions were fulfilled in that case. The rent was in arrears for more than six months; the rent was payable by the month; there was no dispute regarding the amount of standard rent or permitted increases; and the tenant neglected to make payment of the arrears until the expiration of the period of one month after notice referred to in sub-section (2). The tenant came forward to tender the rent after that period. The landlord refused and filed a suit. This Court and the Supreme Court, therefore held that all the conditions were fulfilled and passed the decree for eviction against the tenant in that case. Manorama's case does not decided as to what will happen if the tenant paid within one month sufficient rent so as to reduce the arrears of rent to less than six months. In my judgment, where the tenant does make payment within one month, as aforesaid, so as to reduce the arrears of rent to less than six months. Section 12(3)(A) cannot be applied. To such a case, being any other case within the meaning of sub-section (3) (b), the Court must apply the provisions of Section 12(3)(b).

10. The learned Assistant Judge was, therefore wrong in applying the provisions of Section 12(3)(a) to the facts of the present case where as a result of the payment of Rs.100/- by M. C. Rebello on September 28, 1964 within one month from the period of the notice u/s 12(2), the arrears were reduced to arrears for only about three months, even assuming that the story of the petitioner that the landlord himself agreed to accept the balance after two months is not to be believed. The decree passed by the learned Assistant Judge is, therefore, liable to be set aside.

11. Apart from this, the learned Civil Judge has, after carefully considering the evidence, found that the petitioner was ready and willing to pay the rent and had deposited all rent in Court and therefore, she was protected u/s 12(1). It is undisputed that she sent a money order, notwithstanding that her husband died on October 17, 1964, two days after the death. There cannot be a better proof of her readiness and willingness to pay the rent to the landlord. The learned Assistant Judge has not considered this finding of the trial Judge at all as he appears to have thought that he was compelled by Mrs. Manorama S. Masurekar Vs. Mrs. Dhanlaxmi G. Shah and Another, to hold that S. 12 (3) (a) applied to the present case. The learned Civil Judge was of the view that although M. C. Rebello may have failed to pay all the amounts due, the petitioner, who became a tenant protected u/s 5(11)(c) being the wife of M. C. Rebello residing with him at the

time of his death, was always ready and willing to pay the rent as she was never in default after she became the statutory tenant.

12. It is unnecessary to go into this aspect of the case, as I am of the opinion that this is a case where Section 12(3)(b) applies and as the petitioner has been found to have paid all arrears of rent in Court in the two Courts below and even the stay was granted in this Court to her only on depositing the rent regularly, no decree can be passed against her for eviction.

13. Mr. Divekar, the learned Counsel for respondent No.1 submitted that the view that I am taking of sub-section (3) (a) of Section 12 involves a re-writing of the section, Mr. Divekar submitted that the words "if the tenant neglects to make payment thereof" cannot be so interpreted as to mean "neglects to make payment of arrears for six months or more". According to him, if the tenant fails and neglects to make payment of all the arrears and if all other conditions are applied, then it is the duty of the Court to pass a decree according to the mandatory provisions of sub-section (3) (a) of Section 12. This argument, in my opinion, cannot be accepted because the word "thereof" would mean only of the rent or increases which are in arrears for a period of six months or more, which is referred to earlier in that sub-section. If, as stated above, the tenant makes a payment before the expiry of the period of one month so as to reduce the arrears to less than six months, then it cannot be considered to be a case falling under sub-section (3) (a) of Section 12 but a case falling under sub-section (3) (b) of Section 12.

14. In the result, the petition is allowed. The judgment and decree passed by the learned Assistant Judge on February 21, 1967 are quashed and the decree passed by the learned Civil Judge, on November 30, 1965 is restored and the plaintiff's suit for possession is dismissed, Rule absolute with costs.

15. Petition allowed.